

JUN 24 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LUELENI FETONGI MAKI,

Defendant - Appellant.

No. 07-10501

D.C. No. CR-03-00084-SOM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Hawaii  
Susan Oki Mollway, District Judge, Presiding

Submitted June 20, 2008<sup>\*\*</sup>  
Honolulu, Hawaii

Before: GOODWIN, RYMER, and IKUTA, Circuit Judges.

Lueleni Fetongi Maka appeals the district court's denial of his motion for a new trial on the grounds that the government knowingly used perjured testimony at

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

trial. We review for an abuse of discretion, *United States v. Steel*, 759 F.2d 706, 713 (9th Cir. 1985), and we affirm.

The parties are familiar with the facts. We proceed to the law. To prevail on a motion for a new trial based on newly discovered evidence, Maka must satisfy the five-factor test set out in *United States v. Kulczyk*, 931 F.2d 542, 548 (9th Cir. 1991). Maka has not done so. With regard to the fifth factor, he has not shown that “there is any reasonable likelihood that the false testimony could have affected the jury verdict.” *United States v. Endicott*, 869 F.2d 452, 455 (9th Cir. 1989). Because he has failed to explain the significance of the perjured testimony, the district court did not abuse its discretion in denying the motion.

AFFIRMED